

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MICHAEL T. BERRY,

Plaintiff,

v.

RENO POLICE DEPARTMENT, *et al.*,

Defendants.

Case No.: 3:18-cv-00558-MMD-WGC

**ORDER**

Re: ECF No. 111

Before the court is Plaintiff's Motion to Compel Discovery (ECF No. 111). Defendants responded on October 22, 2020 (ECF No. 114). No reply memoranda has been received by the court as of the date of this order.

Defendants argue Plaintiff's motion is untimely as the close of discovery was August 31, 2020 (ECF No. 101, Status Conference ruling amending Scheduling Order at Plaintiff's request, ECF No. 90). Plaintiff's motion to compel was not filed until October 9, 2020, well after the revised scheduling deadline.

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1 Plaintiff's motion bears a date of "September 11, 2020" (ECF No. 111 at 1, 2 & 4); an  
2 accompanying declaration is dated "September 12, 2020." (*Id.* at 5.) As reflected on the court's  
3 docket, regardless of the dates appearing on Plaintiff's motion, the court did not receive Plaintiff's  
4 motion until October 9, 2020. Although Defendants do not state the date Plaintiff's motion was  
5 received, their response was dated and filed on October 22, 2020, within the deadline provided by  
6 the Local Rules for responding to a motion filed approximately ten days earlier (LR 7-2).  
7 However, even if the September dates on Plaintiff's documents were assumed to be accurate, the  
8 motion is still untimely as filed approximately two weeks after the extended discovery deadline.

9 The docket reflects both parties are proceeding with motions for summary judgment  
10 (ECF Nos. 107 and 110). As untimely as Plaintiff's motion is, it would not be in the furtherance  
11 of justice to address a discovery motion at this juncture.

12 In addition to being denied on procedural grounds, Plaintiff's motion is denied on a  
13 substantive basis as well. Plaintiff did not attach copies of the disputed discovery responses as is  
14 required by LR 26-6(b) to proceed on a motion to compel. According to Plaintiff's motion (and  
15 Defendants' response), however, it appears the first disputed subject pertains to Request for  
16 Production of Documents "#2 and #3." (ECF No. 111 at 2.) Plaintiff's argument as to this  
17 discovery, the subject of which was not detailed, was seemingly that Defendants are not entitled  
18 to a qualified immunity defense and that he has a "right to be secure in his person." These are  
19 legal arguments, not discovery requests.

20 Plaintiff next at page 3 of his motion makes reference to interrogatory #1 which was an  
21 inquiry as to whether Officer Lancaster's body camera was "switched off" prior to his encounter  
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1 with Plaintiff. Although Plaintiff does not provide Lancaster's response, Defendants'  
2 memorandum admits Officer Lancaster's body camera was not turned on "until after the struggle  
3 is over." A statement to that effect was apparently captured on Defendant Mayfield's body camera,  
4 which was functioning. (ECF No 114 at 3.) Thus, this discovery inquiry has been adequately  
5 responded to.

6 The next interrogatory to which Plaintiff refers was his question #6, which is more of an  
7 argument about how Plaintiff would have been able to "spin and thrash with two full grown men  
8 on [his] back." This is not a question but rather argument. Defendants' objection to this inquiry  
9 was valid. However, Defendants also stated that if Plaintiff had viewed Mayfield's video, he  
10 would have observed "Plaintiff spinning around while he is on the ground with two officers trying  
11 to gain control of him. Plaintiff is struggling so much that he eventually knock[ed] the body  
12 camera off Officer Mayfield." (ECF No. 111 at 3.)

13 The last interrogatory Plaintiff sets forth is # 8, which asks whether Officer Lancaster was  
14 aware that "it was against the law when he had his body camera turned off." (ECF No. 111 at 3.)  
15 Defendants stated that this interrogatory "misstates Nevada law and is argumentative and therefore  
16 cannot be answered by the Defendants." (ECF No. 114 at 3.) The court does not reach the  
17 question whether it was or was not against the law for an officer on the date of Plaintiff's arrest in  
18 September 2018 not to be wearing an operative body camera. This will be an issue to be  
19 determined on summary judgment or at trial but is not the subject of legitimate discovery.

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1 Plaintiff's motion (ECF No. 111) fails on both procedural and substantive grounds.  
2 Accordingly, Plaintiff's Motion to Compel Discovery (ECF No. 111) is **DENIED**.

3 **IT IS SO ORDERED.**

4 DATED: November 2, 2020.

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6 *William G. Cobb*

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8 WILLIAM G. COBB  
9 UNITED STATES MAGISTRATE JUDGE  
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